



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

February 1, 2008

REGISTERED MAIL
RB 252 945 409 US

Tim and Sandra Adams Motzer
11910 Lakeside Place NE
Seattle, WA 98123-5955

RE: Water Quality Certification Order 5357 and Coastal Zone Management consistency determination for Corps Public Notice No. 200700346 for residential development known as "The Dunes at Westport" in wetlands adjacent to the Pacific Ocean, near the City of Westport, Grays Harbor County, Washington

Dear Mr. and Mrs. Adams Motzer:

On March 20, 2007, Tim and Sandra Adams Motzer submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposal "The Dunes at Westport". The project proposes to impact a total of 1.12 acres of inter-dunal wetland for the construction of six single-family residences with private driveways, septic tanks, and city water access, as well as an associated access road. Direct impacts include the placement of fill in 0.47 acres of inter-dunal wetlands and indirect impacts include the creation of a 0.65 acre protective wetland buffer directly north and south of the proposed road. The U.S. Army Corps of Engineers issued a joint public notice on December 5, 2007, for the proposed project.

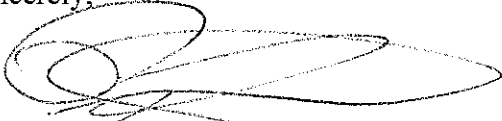
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On December 12, 2007, Tim and Sandra Adams Motzer, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.



If you have any questions, please contact Sarah M. Lukas at (360) 407-7459. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Perry J. Lund', with a large, sweeping loop at the end.

Perry J Lund, Unit Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

PJL:SML:dn
Enclosure

cc: James Green, U.S. Army Corps of Engineers
Steve Kalinowski, Washington State Department of Fish and Wildlife
Tim Haderly, Ecological Land Services, Inc.

e-cc: Loree' Randall, Ecology HQ
Rick Mraz, Ecology SWRO
Deb Cornett, Ecology SWRO

IN THE MATTER OF GRANTING A)	ORDER # 5357
WATER QUALITY)	Corps Reference No. 200700346
CERTIFICATION TO)	The Dunes at Westport located in Grays Harbor
Adams Motzer, Tim and Sandra)	County, Washington.
in accordance with 33 U.S.C. 1341)	
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Tim and Sandra Adams Motzer
11910 Lakeside Place NE
Seattle, WA 98123-5955

On March 20, 2007, Tim and Sandra Adams Motzer submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on December 5, 2007.

The proposed project entails the placement of fill into 0.47 acres of inter-dunal wetlands for the construction of six single-family residences and appurtenant utilities, as well as an associated access road on State Route 105, near Westport, Grays Harbor, Washington. Section 24, Township 16N, Range 12W, WRIA# 22, Lower Chehalis watershed.

The project proposes to impact 1.12 acres of inter-dunal wetlands for the construction of a residential development of six single-family residences and an associated access road stemming west from State Route 105. Direct impacts include the placement of fill in 0.47 acres of inter-dunal wetlands adjacent to the Pacific Ocean for the construction of the proposed access road. Indirect impacts include 0.65 acres of buffer to inter-dunal wetland directly north and south of the proposed road.

Proposed mitigation to compensate for permanent impacts includes creation of 0.47 acres of on-site wetlands, at a wetland creation ratio of 1:1, and a total preservation area of 6.86 acres, at a ratio of 6.1: 1. The preservation area will include: a wetland preservation area of 3.16 acres, a mature upland pine forest preservation area of 2.09 acres, and a dune preservation area of 1.61 acres. Additional mitigation includes a buffer enhancement area of 0.15 acres, and a slope planting area of 0.35 acres.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306, and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and,
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions

1. For purposes of this Order, the term "Applicant" shall mean Tim and Sandra Adams Motzer, and their agents, assignees, and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Project Coordinator, PO Box 47775, WA 98504-7775. Any submittals shall reference Order No. 5357 and Corps No. 200700346.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 20, 2007. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Site Specific Conditions

1. No Sitka spruce tree shall be cut or topped in the wetlands, mitigation areas or upland preserve areas, unless determined to be a hazard tree.
2. The definition of "hazard tree", as it relates to the subdivision, shall be "A tree with a high probability of falling due to a debilitating disease, a structural defect, a root mass more than 50% exposed, or having been exposed to wind throw within the past 10 years, and where there is a residence or residential accessory structure within a tree length of the base of the trunk, or where the top of a bluff or steep slope is endangered. Where not immediately apparent, Ecology will make the determination if a tree is considered a danger tree. In order to make this determination the Applicant shall submit a report prepared by an arborist or forester to Ecology."

C. Construction Conditions

1. The Applicant shall obtain and comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit for Construction Activity for this project.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

D. Wetland Mitigation and Monitoring

1. Impacts to wetlands shall be mitigated as described in the Wetland Mitigation Proposal, *Wetland Mitigation Plan for Motzer Subdivision (The Dunes at Westport) Grays Harbor County, Washington*, dated October 5, 2007. This proposal shall be referred to as the Wetland Mitigation Plan.
2. Monitoring will be conducted in accordance with the Wetland Mitigation Plan, dated October 5, 2007. Monitoring reports will be prepared each monitoring year and submitted to Ecology's Federal Permit Coordinator by the end of each monitoring year. The reports will include the following elements:
 - Location map and an as-built drawing.
 - Historic description of project including: dates of planting installation(s), current year of monitoring, and restatement of mitigation goals, objectives, and performance standards.
 - Description of monitoring methods.
 - Documentation of plant survival, cover, and overall development of the plant communities.
 - Assessment of non-native, invasive plant species and recommendations for management.
 - General observations of wildlife, including amphibians, invertebrates, reptiles, birds, and mammals.
 - Photographs from established photo points.
 - Summary of maintenance and contingency measures proposed for the next season and completed for the past season.
3. The plantings in the buffer enhancement area shall be doubled from the amount listed in the above-referenced Wetland Mitigation Plan.

E. Reporting Requirements

1. A detailed "as built" report shall be prepared after mitigation construction showing any variances from the final wetland mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
 - comments from a wetland specialist present on site during mitigation construction;
 - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
 - photographs of the area taken from permanent photo points which will be designated on the site plan;
 - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
 - an analysis of any changes to the mitigation plan that occurred during construction.

Two (2) copies of the "as-built" report and drawings shall be sent to Ecology's Southwest Regional Office Attn: Federal Permit Coordinator at P.O. Box 47775, WA 98504-7775, within 60 days of completing construction and planting, and in no case later than January 31 of the year of completion.

F. Timing Requirements

1. This Order is valid until all compliance requirements in this document have been met.

G. Notification Requirements

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Southwest Federal Permit Coordinator within fourteen (14) days prior to the start of construction at the project and/or the mitigation site.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of the project construction and construction of the mitigation site.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact, and contact's phone number.

H. Emergency/Contingency Measures

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300.

I. Appeal Process

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43 21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

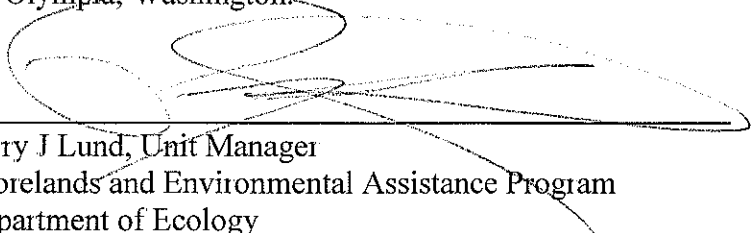
3. And send a copy of your appeal to:

Sarah Lukas
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43 21B.320. These procedures are consistent with Ch. 43 21B RCW.

Dated 1/31/08 at Olympia, Washington.


Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

